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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/868,419      | 06/19/2001  | Ronnie Brain         | APPL 0102 PU        | 1458             |

7590 08/08/2003

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EXAMINER

SMITH, JAMES G

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3723     | 15           |

DATE MAILED: 08/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

CJS

|                              |                            |                  |  |
|------------------------------|----------------------------|------------------|--|
| <b>Office Action Summary</b> | Application No.            | Applicant(s)     |  |
|                              | 09/868,419                 | BRAIN ET AL.     |  |
|                              | Examiner<br>James G. Smith | Art Unit<br>3723 |  |

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 24 June 2003.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1,3,5,7-9,13,15,19,21,22 and 27-37 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 1,3,7-9,13,15,19,21 and 22 is/are allowed.
- 6)  Claim(s) 5 and 27-37 is/are rejected.
- 7)  Claim(s) 27,28,30-33 and 35-37 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on 24 June 2003 is: a)  approved b)  disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### **DETAILED ACTION**

1. Claims 27, 28, 30-33 and 35-37 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1, 3, 7-9, 13, 19, 21 and 22. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
2. It would also appear that claim 34 is a duplicate of claim 15, however the dependency is different.
3. Applicant has requested that the amendment filed 19 April 2003 be entered in the RCE and that the preliminary amendment also be entered, this is apparently what is causing the above problems.

### ***Drawings***

4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 24 June 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5 and 27-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what these claims are drawn as they depend from claims that already make a reference to an attachment means that allows an operating member, i.e. a power tool, to be secured to the device. It thus appears that the same element is being twice claimed.

Also, the use of the reference numerals in new claims 27-37 only causes confusion as the same numeral is used to designate different elements, e.g. impact means (44), operating member (44) and means (44). The use of these numerals also causes a problem in claim 34 as the blades (14) are not part of the claimed embodiment of claim 27, from which claim 34 depends.

***Allowable Subject Matter***

7. Claims 1, 3, 7-9, 13, 15 and 19-22 are allowed.

***Response to Arguments***

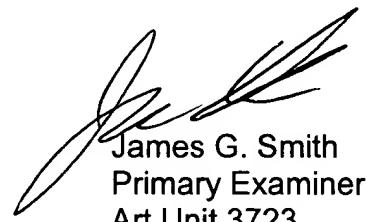
8. Applicant's arguments with respect to claims 27-37 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has filed a preliminary amendment that conflicts with the entered amendment of 28 April 2003 that was entered as requested in the filing of this RCE.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) first Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-9835 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



James G. Smith  
Primary Examiner  
Art Unit 3723

jgs  
August 6, 2003